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ACTION WHA-00

INFO	LOG-00	EEB-00	AID-00	A-00	ACQ-00	CCO-00	CG-00
	CIAE-00	COME-00	CTME-00	DODE-00	DOEE-00	DOTE-00	DS-00
	FAAE-00	FBIE-00	VCI-00	TEDE-00	INR-00	INSE-00	L-00
	CAC-00	M-00	VCIE-00	NRC-00	NSAE-00	ISN-00	NSCE-00
	OCS-00	OMB-00	PA-00	PM-00	PRS-00	P-00	SCT-00
	ISNE-00	SP-00	SS-00	TRSE-00	T-00	USSS-00	IIP-00
	PMB-00	DSCC-00	DRL-00	G-00	SAS-00	FA-00	/000W

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FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC IMMEDIATE 5109

INFO ALL CANADIAN POSTS COLLECTIVE IMMEDIATE

RELEASED IN PART

B1, 1.4(D), B2

C O N F I D E N T I A L OTTAWA 000402

NOFORN

E.O. 12958: DECL: 03/01/2017

TAGS: PTER, PGOV, PREL, CA

SUBJECT: CANADIAN GOVERNMENT FORCED TO REEXAMINE PROVISIONS
OF TERRORIST LEGISLATION

Classified By: PolMinCouns Brian Flora. For Reasons: 1.4 (b) and (d).

1. (C/NF) SUMMARY:

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On February 23, the Supreme Court of Canada struck down the use of secret evidence in upholding indefinite detentions of terrorist suspects, although it did uphold the principle of detentions under Security Certificates. And on February 27 the three opposition parties, after a heated, highly partisan debate, defeated a government motion to renew two controversial clauses in the Anti-Terrorism Act that authorized preventive detention of terrorist suspects and compulsory testimony of witnesses.

B1

Prime Minister has confirmed that reworking Canada's anti-terrorism legislation has now become a priority, and Public Safety Minister Day has vowed to introduce new legislation to protect Canadians from terrorists. END SUMMARY.

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2. (SBU) On February 27 Canada's three opposition parties joined together to defeat the minority government's motion to extend two controversial clauses in the 2001 Anti-Terrorism Act. The clauses permitted: preventive detention of terrorist suspects for up to twelve months without charge; and investigative hearings that could compel testimony. The two powers were originally recognized as so extraordinary that they were included in the original Act with special safeguards in the form of an automatic five-year "sunset" provision, unless extended by a resolution in both the House and the Senate. Even with these checks, and even in the immediate aftermath of the 9/11 attacks, many MPs considered the measures unnecessary. The concerns have not gone away, even though neither provision has ever been used, much less abused.

3. (SBU) The "sunset" of the anti-terrorist clauses was not expected. The left-leaning NDP and Bloc Quebecois had long opposed them on civil liberties grounds, but Liberal MPs were expected to support the measures that were originally contained in legislation introduced and passed by a previous Liberal government. Instead, on February 9, Liberal leader Dion announced that he would oppose the automatic retention of "draconian" powers, even though they had never been used. The issue became a major test of his leadership within the Liberal Party and reflected a deep rift within the Caucus. Ultimately, however, only one Liberal MP broke ranks to vote with the government. Irwin Cotler, a former Liberal justice minister, abstained, while a handful of other Liberals, including former Liberal PM Paul Martin, were conspicuously absent from the vote. In the two weeks preceding the vote, the issue became highly politicized. The Conservative government accused the Liberals of "flip-flopping" on their support for the Act and of being soft on terrorism. Liberal hand-wringing was further heightened when a report from a Liberal-dominated Senate committee reviewing the Anti-Terrorism Act recommended that clauses be maintained for a further three years. Prime Minister Harper accused Liberal leader Stephane Dion of choosing internal caucus politics over the national security of Canadians, but Dion countered over the national security of Canadians, but Dion countered that he had taken a principled stand in defense of human rights.

4. (SBU) The defeat of the anti-terrorism clauses and the division within the Liberal Party must be seen in the context of an ongoing debate in Canada over achieving the right balance between security and human rights. The Maher Arar case has been enormously influential and has been referenced

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in recent rulings related to immigration security certificates. The controversial certificates allow the indefinite detention and deportation of foreign nationals on security grounds. For some critics, the certificates have come to symbolize what they characterize as the excesses of the post-9/11 fight against Islamist terror groups. In past months, three men, Adil Charkaoui, Mohamed Harkat, and Mohamed Zeki Mahjoub have been released from indefinite detention, over the objections of the federal government, by courts citing unreasonably long waits for trial. The government continues to hold two men under security certificates at a secure immigration processing facility in Kingston, Ontario, dubbed "Guantanamo North" by its detractors.

5. (SBU) On February 23, the Supreme Court of Canada upheld detention under the certificates, but struck down the use of secret evidence, ruling that denying suspects the right to refute secret evidence against them violates the right to a fair trial, as well as guarantees to life, liberty and security of the person under the Charter of Rights. The Court suspended the ruling for one year to give Parliament time to rewrite the relevant sections of the Immigration Act.

In a hint of how the government might amend the process, the ruling noted that less intrusive alternatives exist in Canada and abroad, such as the use of lawyers or special advocates who could hear the evidence on behalf of the accused.

6. (SBU) Recent court rulings have struck down other measures in the Anti-Terrorism Act. In October 2006, an Ontario court said that Parliament would have to rethink the legal definition of terrorism to exclude political and religious beliefs, which are protected by the Charter of Rights, as motives for terrorist acts. Questions have been raised in Parliament over the practice of rendition and the use of Canadian airspace for CIA flights. Privacy and human rights concerns have also been expressed over plans for a Canadian no-fly list and the sharing of Canadians' personal information with the United States and other countries. Liberal MPs have recently pressed for belated implementation of a Refugee Appeal Division (RAD), provided for but never enacted in the 2001 Immigration Act, to provide a further appeals process for refugee claimants fighting deportation. There has also been renewed media interest in the case of Omar Khadr, Canada's lone prisoner at Guantanamo Bay, and the government is being criticized for failing to intervene to ensure a fair trial for him and to demand his repatriation to Canada.

7. (SBU) The ongoing debate highlights tension in Canada

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between the government's focus on national security concerns and the emphasis on civil liberties raised by the opposition and human rights NGOs. In defeating the government's motion on the "sunset" clauses, Dion argued that the government had not considered reform proposals to the anti-terrorism legislation that were under consideration by (opposition dominated) parliamentary committees. (Note: Separate Commons and Senate committees are currently reviewing the Anti-Terrorism Act, but the government has elected to wait for their final reports before taking action.) In any case, Dion left the door open for his party to support future alternative anti-terrorism measures in the broad context of anti-terrorism law reform, and the reworking of Canada's anti-terrorism legislation will likely come to the government's front burner. After the anti-terrorist vote, the Prime Minister said that the expiration of the sunset clauses is not the end of the matter, and Public Safety Minister Stockwell Day vowed to protect Canadians by fashioning new tools to combat terrorism.

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